



**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X  
EMMET & CO, INC.,

Plaintiff,

-against-

CATHOLIC HEALTH EAST, et al.,

Defendants.  
-----X

11 Civ. 3272 (RMB)

**ORDER**

Based upon a review of the record herein, including the proceedings before this Court on September 20, 2011; Plaintiff's Second Amended Complaint ("SAC"), filed September 20, 2011, against among others, Merrill Lynch, Pierce, Fenner & Smith Inc., a Delaware Corporation with its principle place of business in New York; Plaintiff's letter to the Court, dated September 27, 2011, requesting that the Court "remand this action back to the Supreme Court of the State of New York, New York County (Commercial Division)" since "joinder of Merrill Lynch, Pierce, Fenner & Smith, Inc. as a defendant deprives the Court of diversity jurisdiction over this action"; and the applicable legal authorities, it is hereby

**ORDERED** that the Clerk of Court is respectfully requested to remand this action back to New York State Supreme Court, New York County (Commercial Division). See Appell v. Fleet/Norstar Financial Group, No. 96 Civ. 7185, 1996 U.S. App. LEXIS 30100, at \*3 (2d Cir. 1996) ("It is well established that if the district court permits joinder of a nondiverse party, diversity jurisdiction is destroyed, and the case must be remanded to state court."); see also, Cushing v. Moore, 970 F.2d 1103, 1106 (2d Cir. 1992).

Dated: New York, New York  
September 27, 2011

*RMB*

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RICHARD M. BERMAN, U.S.D.J.